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Report of the Independent Expert on the situation of human rights in the Sudan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononi, prepared pursuant to Council resolution 30/22. The report provides an appraisal of the human rights situation in the Sudan during the period from October 2015 to June 2016 and focuses principally on the need to enhance the protection of human rights on the ground and the implementation of the recommendations contained in the Independent Expert's previous report to the Council (A/HRC/30/60). In the present report, the Independent Expert outlines the recent developments in the country and describes the technical assistance and capacity-building needs of the Government, the national human rights institution and civil society organizations and makes recommendations to the Government, the international community and the armed movements in the Sudan with a view to strengthening capacity in the field of human rights and improving the situation of human rights in the Sudan.

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I. Introduction

1. In its resolution 30/22, the Human Rights Council renewed the mandate of the Independent Expert on the situation of human rights in the Sudan for a period of one year and requested him to continue his engagement with the Government of the Sudan to assess, verify and report on the situation of human rights with a view to making recommendations on technical assistance and capacity-building for addressing human rights in the country. The Council also requested the Independent Expert to report to the Council at its thirty-third session.

2. The present report covers the period from October 2015 to June 2016. In it, the Independent Expert provides an appraisal of the human rights situation in the Sudan during the reporting period, focusing principally on the need to enhance the protection of human rights on the ground and the implementation of the recommendations contained in his previous report to the Council (A/HRC/30/60).

3. The report is based on information made available to the Independent Expert during his visit to the Sudan as well as on information provided by the Government of the Sudan, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and other sources, including civil society organizations, United Nations agencies, funds and programmes with operational competence in the Sudan, as well as the donor community.

4. The Independent Expert expresses his gratitude to the Government of the Sudan for its invitation and cooperation with the mandate he represents. He emphasizes that he was allowed access to all places and institutions that he expressed an interest in visiting and to all officials with whom he expressed the wish to meet.

5. The Independent Expert also thanks the office of the United Nations Resident and Humanitarian Coordinator in Khartoum, UNAMID, the United Nations Development Programme, other United Nations agencies and international relief organizations operating in the Sudan, members of the diplomatic community, civil society organizations and all other groups and individuals who provided assistance and shared information with him.

II. Methodology and engagement

6. The Independent Expert undertook one visit to the Sudan during the reporting period, from 14 to 28 April 2016. He visited Khartoum, Kadugli in Southern Kordofan State, El-Fasher and Thabit in Northern Darfur State, El-Daein in Eastern Darfur State and El-Gezira State. He met with senior government officials, the United Nations Resident and Humanitarian Coordinator, representatives of United Nations and international relief agencies, members of the diplomatic community, civil society organizations, leaders of opposition political parties, academia, community leaders, human rights defenders, professional groups and various interlocutors, and received reliable information about the general situation of human rights in the Sudan.

7. In Khartoum, the Independent Expert held wide-ranging discussions with senior government officials, including the State Minister for Foreign Affairs, the State Minister for Justice, the State Minister for Finances, the Chief Justice and representatives of the judiciary, parliamentarians and various specialized units of different ministries. He was apprised of the situation of human rights in the country by the Rapporteur and members of the Advisory Council for Human Rights and was encouraged by their response to some of the issues he raised. He had frank and constructive discussions with the Director in charge of training and capacity-building of the National Intelligence and Security Service and interacted with the Chair and members of the National Commission for Human Rights, the

Commissioner of the Humanitarian Aid Commission and his team, members of the Khartoum Bar Association, the Chair and members of the Union of Sudanese Journalists, the Sudanese Independent Journalists Network and the Chancellor and senior professors of the University of Khartoum, who shared with him their views on the situation of human rights in the Sudan. The Independent Expert also attended a forum on the impact of unilateral coercive measures on the enjoyment of human rights and met with representatives of civil society organizations, human rights defenders and victims of human rights violations, some of whom shared their personal experiences with him. He also met with members of the diplomatic community, including the African Union and the African Development Bank, and representatives of opposition political parties, from whom he received valuable information on the human rights situation in the country. He also visited the Omdurman prisons for men and women, where he was briefed on detention conditions.

8. In Northern Darfur, the Independent Expert met with the Executive Chair of the Darfur Regional Authority, the Deputy Governor of Northern Darfur State, the Special Prosecutor for Crimes in Darfur, the head of the Humanitarian Aid Commission in Northern Darfur and his team, the representative of the National Commission for Human Rights and officials of UNAMID and United Nations agencies in Northern Darfur. He also visited the Zam Zam camp for internally displaced persons, where he received information on living conditions of the residents, and the model village in Thabit.

9. In Eastern Darfur, the Independent Expert held meetings with the Governor of Eastern Darfur State and his team, as well as with officials of UNAMID and representatives of civil society organizations. He also visited the Khor Omer camp, which hosts South Sudanese refugees.

10. In Southern Kordofan, the Independent Expert met with state authorities, including the Governor of Southern Kordofan State and his team, parliamentarians, judicial authorities and community leaders. The Independent Expert also visited El-Gezira State, where he was briefed on the impact of unilateral coercive measures on the agricultural and health sectors in the region.

11. Lastly, during a mission to France in June 2016, the Independent Expert met with representatives of armed opposition movements, including the Justice and Equality Movement, the Sudan Liberation Army-Minni Minawi and the Sudan Liberation Movement-Abdul Wahid, who shared their views about the peace process and the situation of human rights in Darfur.

III. Recent developments

12. The national dialogue continued to be the main political development in the Sudan during the reporting period. The internal national dialogue conference was inaugurated by President Al-Bashir on 10 October 2015, amid a boycott from a large segment of the main opposition parties, including the National Umma Party, the Communist Party of the Sudan and the Reform Now Party, as well as the major Sudanese armed movements, including the Justice and Equality Movement, Sudan Liberation Army-Minni Minawi and Sudan Liberation Movement-Abdul Wahid.

13. During the Independent Expert's mission to the Sudan in April 2016, senior government officials stressed that the national dialogue would be effectively pursued by the Government as a means of improving the political, social and human rights situation in the country. The six subcommittees of the national dialogue conference completed their debates and submitted their recommendations on 28 February 2016. Participants reached consensus on several issues, including Sudanese identity and guidelines for the transitional review process. Nonetheless, the opposition group was of the view that a meaningful

national dialogue still needed to take place, subject to necessary assurances that the Government would allow an enabling environment, free of intimidation, arbitrary arrests and detention.

14. The Independent Expert calls upon the Government to create a conducive environment for a free and fair national dialogue and to ensure the active participation of all stakeholders with a view to advancing peace and reconciliation in the Sudan.

15. On 14 January 2016, the Government of the Sudan launched a major military operation against the Sudan Liberation Movement-Abdul Wahid positions in the Jebel Marra area of Darfur, accusing the rebel movement of looting and attacking civilians and military and commercial convoys in the area. The Independent Expert was concerned by the impact of the conflict on civilians in the light of allegations of human rights violations and serious violations of international humanitarian law. He noted that there were at least 20,000 civilians who remained temporarily sheltered outside the UNAMID team site in the Sortoni area of Northern Darfur State. He calls upon the authorities of the Sudan, who bear the primary responsibility for the protection of human rights in Darfur, and all other parties to the conflict to respect the rights of the civilian population, including by taking proactive measures to deter attacks against civilians.

16. On a positive note, the Independent Expert commended the efforts being made by UNAMID, the African Union, the Government of Qatar and other partners to promote political dialogue between the Government of the Sudan and armed opposition movements under the framework of the Doha Document for Peace in Darfur. He welcomed the signing by the Government of the Sudan in Addis Ababa in March 2016 of the road map agreement aimed at ending the conflicts in Darfur, Southern Kordofan and Blue Nile. He urges the armed movements to put the interests of the people of Sudan first and to sign the road map agreement in order to bring peace and stability to the Sudan.

17. The Independent Expert welcomed the establishment of a sub-office of the National Human Rights Commission in Darfur in February 2016 as a positive step towards enhancing the capacity of the national human rights institution to undertake human rights monitoring and reporting in the Darfur region. He calls upon the Government of the Sudan to provide the support necessary to the National Human Rights Commission to expand its presence and activities in the other four Darfur States.

18. From 11 to 13 April 2016, a referendum was conducted to determine the administrative status of Darfur. The choice was between the current system of five states or one Darfur regional administration. On 14 April, the Darfur Referendum Commission announced that 97.27 percent of the voters had opted for Darfur to remain in its current administrative configuration of five states. Observers from the African Union and the League of Arab States monitored the conduct of the referendum.

IV. Main human rights challenges

19. While the Independent Expert acknowledged the Government's commitment and openness to a constructive dialogue during his visit, he was concerned about the subsisting human rights challenges raised in his previous report that the Government had still not addressed. These included the violations committed during the oil-subsidy demonstrations in September 2013, press censorship, harassment of human rights defenders and curtailment of activities of civil society organizations, restrictions on freedom of religion, as well as arrests and detention of student activists.

A. Human rights violations committed during the demonstrations of September 2013

20. As a follow-up to his last visit and report, the Independent Expert raised the issue of the victims and families of victims of the oil-subsidy demonstrations of September 2013 with the Sudanese authorities. The Independent Expert recalled that there had been demonstrations in relation to the withdrawal of the oil subsidy across Khartoum State in September 2013, which had resulted in fatal shootings, injuries and destruction of property and had led to the arrest and detention of many demonstrators. The international community had called for a thorough investigation of the human rights violations that had been committed during the demonstrations.

21. The Independent Expert was informed about the ongoing compensation process for victims and families of victims of these incidents by the Government of the Sudan. Nonetheless, he encouraged the authorities to ensure that an independent judicial inquiry was conducted into the killings and various other human rights violations and to bring those responsible for these incidents to justice. Impunity for human rights violations would send the wrong message to victims, perpetrators and the wider public and would undermine the rule of law.

B. Press censorship

22. Since October 2015, there had been several clampdowns on press and media freedoms, including the censorship and temporary closure of newspapers in the Sudan. In this regard, on 12 October 2015, Manal Abdul-Allah, a journalist at *Al-Siyasi* newspaper, was summoned and interrogated by security officers in relation to an article regarding the possible presence of Islamic State in Iraq and the Levant in the Sudan. *Al-Tayar* and *Al-Sayha* newspapers were seized by security officers on 13 December 2015, before being shut down on 14 December 2015.

23. On 1 March 2016, the National Intelligence and Security Service summoned and interrogated Rokaya al-Zaki, a journalist at *Al-Ray Al-Aam* newspaper, after the publication of an article on financial corruption relating to the Workers' Union. During the second week of May 2016, the National Intelligence and Security Service confiscated the independent daily newspaper *Al-Gareeda* for unknown reasons. Printed copies of the newspaper were seized by security service officers on 9, 10, 12 and 13 May 2016. In addition, journalists reported that they had been interrogated and harassed by the police and security service officers.

24. The Independent Expert raised this issue in his discussions with government officials as a legitimate concern to which the Government needed to pay attention. In this regard, he welcomes the 1 May 2016 decision of the Constitutional Court that allowed *Al-Tayar* newspaper to resume its activities. He calls upon the Government to create an environment conducive to a free and independent press.

C. Harassment of human rights defenders and curtailment of activities of civil society organizations

25. During the reporting period, the Government continued to clamp down on the activities of civil society organizations.

26. On 29 February 2016, the National Intelligence and Security Service raided the Khartoum Centre for Training and Human Development, a civil society organization, and confiscated nine mobile phones, five laptops, as well as publications, flip charts and other

office documents. Following the raid, passports of human rights defenders who were members of the Centre were confiscated.

27. Between 3 and 13 March 2016, human rights defenders and activists associated with the Centre were summoned to the office of the National Intelligence and Security Service in Khartoum, where they were interrogated. All the individuals summoned were questioned about the activities of the organization and their relationship with the Al-Khatim Adlan Centre for Enlightenment and Human Development, an organization that was forcibly shut down by the Government in 2012. Subsequent to the raid, the Director and another human rights defender were summoned and charged with criminal offences.

28. In addition, in March 2016, four representatives of Sudanese civil society[1] were intercepted by security officials at the Khartoum International Airport on their way to Geneva, where they were to participate in the pre-session meetings of the universal periodic review of the Sudan. After checking in their luggage and presenting their passports at the immigration desk, they were stopped and informed of travel bans in place against them. Their passports were confiscated and they were told to report to the Information and Inquiry Section at National Intelligence and Security Service headquarters for further information. This effectively prevented them from travelling to Geneva and attending the pre-session meetings of the review.

29. While the Independent Expert welcomed the decision of the Sudanese authorities to return the passports to the human rights defenders, he expressed concern about the allegations that the travel bans against Messrs. Elshowaya and Shaddad were in reprisal for their cooperation with the United Nations, its representatives and mechanisms in the field of human rights, including the universal periodic review.

30. The Independent Expert also expressed concern about the travel bans against Messrs. Salih and Yousif, which appeared to be in retaliation for their human rights activities and designed to curtail the legitimate exercise of their right to freedom of opinion and expression.

31. In spite of the ongoing national dialogue, the Independent Expert noted a lack of meaningful dialogue between the Government and civil society actors for the promotion and protection of human rights in the Sudan. The Independent Expert emphasized that the work of human rights defenders was vital and that measures to intimidate or harass them because of their work, including their involvement with the universal periodic review process, were of serious concern. He stressed the need for the Government to allow human rights defenders to carry out their activities in an open, safe and secure environment.

D. Restrictions on freedom of religion

32. The Independent Expert received information about incidents of arrest and restrictions on freedom of religion or belief in the Sudan. On 2 and 3 November 2015, 27 Sudanese nationals, including 3 minors, were arrested in Khartoum and charged with apostasy. According to information received, the individuals, who were members of the Hausa ethnic group, followed an interpretation of Islam that is at variance with the dominant denomination supported by the Government of the Sudan.

[1] These were Sawsan Hassan Elshowaya, Director of the Asmaa Society for Development, Muawia Shaddad, President of Human Rights and Legal Aid Network, Faisal Mohamed Salih, journalist and human rights defender, and Siddig Yousif, President of the Sudanese Solidarity Committee.

33. On 30 November 2015, the three minors, who were held in custody together with adults, were released by the Khartoum Criminal Court on the condition that they pledged to attend the trial. On 9 December, the Court released two of the individuals owing to insufficient evidence. The remaining 22 adults were released on bail on 14 December 2015.

34. On 13 December 2015, Pastor Telahoon Nogosi Kassa Rata, leader of a Christian student movement and head of the mission office of the Khartoum North Evangelical Church, was arrested by the National Intelligence and Security Service. He was reportedly questioned several times in relation to a Christian foreigner with whom he allegedly met in Ethiopia and in the Sudan. On 18 December, the National Intelligence and Security Service arrested two pastors of the Sudan Church of Christ, Pastor Kuwa Shamal, head of the mission working group in his municipality and Pastor Hassan Abduraheem Kodi Taour. Pastor Shamal was released on 21 December. However, according to information received, Pastor Taour remained in custody and had been denied access to his family and a lawyer.

35. The Independent Expert raised these concerns with the relevant Sudanese authorities, who informed him that two other pastors were also detained, bringing the total to four pastors held by the National Intelligence and Security Service. The security officers added that the cases had been transferred to the judicial authorities, who had charged the pastors concerned with criminal offences.

36. At the time of writing the report, the Independent Expert had yet to receive confirmation regarding the trial of the pastors. The Independent Expert calls upon the Sudanese authorities to ensure that the right to a fair trial and due process was guaranteed to the pastors concerned. He emphasized that the Government had an obligation to uphold the right to freedom of religion and belief as guaranteed in the Constitution of the Sudan and in article 18 of the International Covenant on Civil and Political Rights, to which the Sudan was a party.

E. Situation of student activists in Khartoum

37. On 26 October 2015, nine Darfuri students who had participated in a peaceful sit-in in Khartoum were arrested by the police and charged with participating in a riot, causing disturbance of public peace and public nuisance. They were released on bail after three days of detention. On 14 November 2015, eight students from the Holy Quran University in Omdurman, including four Darfuri students, were arrested by the National Intelligence and Security Service in Omdurman for participating in a peaceful sit-in at the Holy Quran University on 25 and 26 October. The students were protesting against the university's decision to suspend the exemption from paying tuition fees for new Darfuri students. The police and security officers dispersed the sit-in using tear gas and riot batons; some of the protestors sustained injuries.

38. In another case, five student activists from the University of Khartoum were detained without charge after being arrested by the National Intelligence and Security Service on 13 April 2016 at Khartoum Dental Hospital. The students had accompanied an injured friend to the hospital. During his visit to the Sudan in April 2016, the Independent Expert raised the matter of the five students who remained in detention with the Sudanese authorities. He was informed that the case had to be handed over to the relevant judicial authorities for prosecution. He later noted and welcomed the decision of the Sudanese authorities to release the students on 19 and 21 June 2016.

39. The National Intelligence and Security Service also arrested 27 students, including 5 female students, who were involved in protests at the University of Khartoum. The students began protesting on 11 April, following reports that the Government was planning

to sell some of the university buildings, and continued until 14 April. The 27 students were released without charge on 16 April 2016.

F. Human rights violations and abuses in conflict-affected areas

40. There was a significant upsurge in armed conflicts perpetrated by both State and non-States actors during the reporting period. The ongoing conflict in the Jebel Marra area of Darfur, the fighting in Southern Kordofan and Blue Nile States and intercommunal clashes continued to result in serious violations of human rights and international humanitarian law and large-scale displacement of civilians.

1. Darfur

41. During the reporting period, the security situation in Darfur was marked by an escalation in fighting between government forces and the Sudan Liberation Movement-Abdul Wahid. The Independent Expert was concerned by the detrimental effects of the conflict on civilians in the light of allegations of human rights violations and serious violations of international humanitarian law, including indiscriminate killings, destruction and burning of villages, abduction of and sexual violence against women, as well as large-scale displacement of civilians.

42. According to information received, during the first five months of 2016, around 80,000 people were reportedly newly displaced across Darfur. An additional 142,000 people were also reportedly displaced, but the United Nations had been unable to verify these figures owing to lack of access to the affected areas. The vast majority of displacements in 2016 had been triggered by the conflict in Jebel Marra, as well as intercommunal clashes.

43. The human rights and humanitarian situation in Eastern Darfur remained a matter of concern, with killings and displacement of civilians owing to intercommunal clashes. The Independent Expert noted with concern that, during the reporting period, the size and scale of intercommunal clashes over cattle rustling and control of natural resources in Eastern Darfur had been unprecedented, as were the sophisticated firearms used by the combatants.

44. The Independent Expert is of the view that a sustainable solution to this problem would involve proactive remedial measures to address impunity in the region and a well-designed and peaceful civilian disarmament campaign. He calls upon the Government to take pertinent measures to strengthen accountability for human rights violations and abuses as well as violations of international humanitarian law in Eastern Darfur State and other parts of Darfur.

45. He calls upon the authorities of the Sudan, who bear the primary responsibility for the protection of human rights in Darfur, and all other parties to the conflict to respect the rights of the civilian population.

(a) Situation of internally displaced persons

46. The Independent Expert visited the Zam Zam camp for internally displaced persons in Northern Darfur, where residents expressed concern about the shortage of food and the limitations with regard to opportunities to acquire skills to help improve life chances, including income-generating activities for women. In addition, the security situation inside and outside the camp remained a matter of concern owing to the presence of various armed individuals and criminality in the region.

47. The Independent Expert expressed concern about nine incidents of rape of women from the Zam Zam camp that occurred in April 2016. According to information received, these incidents happened when the women were outside the camp engaged in livelihood activities. The Independent Expert calls upon the Government and UNAMID to fulfil their obligations in creating a safe and secure environment for the displaced communities, including by expanding security patrols in and around farmlands, which are critical to ensuring food security.

48. The Independent Expert received information about public statements made by the Sudanese authorities in relation to the return of internally displaced persons and the closure of camps in Darfur. In his interactions with internally displaced persons, he noted their reluctance to agree to such a decision. They were of the view that security and justice were not yet guaranteed in their areas of origin or elsewhere for them to begin a new life.

49. While it is the primary responsibility of the Sudanese authorities to establish conditions and provide the means that would allow internally displaced persons to return voluntarily to their homes or places of origin, the authorities should make every effort to ensure the full participation of displaced persons in the planning and management of their return or resettlement and reintegration.

50. The Independent Expert highlights that, in accordance with the Guiding Principles on Internal Displacement, the rights, needs and interests of internally displaced persons must be the primary consideration guiding all policies and decisions of the Sudanese authorities relating to the closure of camps for internally displaced persons in Darfur.

(b) Challenges to rapid delivery of humanitarian assistance to people in need

51. Darfur reportedly host some 3.3 million people in need of humanitarian assistance, of whom 1.6 million are in camps, according to the Office for the Coordination of Humanitarian Affairs. Nonetheless, the Government continues to push for a reduced role of the international humanitarian community in the country. Entry visas and renewal of residency permits are frequently used to limit humanitarian action and, in some cases, as a means of expelling humanitarian personnel. In addition, restrictions on movements and denial of access and clearances continue to be imposed on humanitarian agencies by the Sudanese authorities. The result has been a steady reduction in humanitarian operational capacity in Darfur and other areas of the Sudan.

52. The Independent Expert calls upon the Government to allow humanitarian agencies and UNAMID unfettered access for delivery of humanitarian assistance to civilians in need.

(c) Sexual and gender-based violence

53. Sexual and gender-based violence remained a serious concern in Darfur during the reporting period in spite of the measures taken by the Government to address it. The climate of impunity continued to create an environment conducive to the perpetration of sexual violence. Many incidents of sexual violence were not reported owing to fear of social stigma associated with rape, fear of reprisal and the victims' lack of trust in the justice system to effectively investigate and prosecute perpetrators.

54. Notwithstanding these challenges, the Government has taken a number of positive steps to combat sexual and gender-based violence. In this regard, the Independent Expert welcomes the appointment of a special prosecutor for violence against women in North Darfur State. He hopes that this development will enhance the capacity of the judiciary to address cases of violence against women. The Independent Expert was pleased to learn that 20 prosecutors had been deployed across the Darfur region during the reporting period as part of efforts by the Sudanese authorities to improve access to justice. However, some of them had to work from headquarters, owing to the lack of adequate resources and the

volatile security situation in the areas of their deployment. The Independent Expert calls upon the Government of the Sudan to provide the newly deployed prosecutors with adequate means to carry out their duties in an efficient manner.

(d) Situation of South Sudanese refugees in Eastern Darfur

55. According to information received, as of the beginning of June 2016, Sudan has been hosting about 232,000 South Sudanese refugees. The majority of the newly arrived sought refuge in Khor Omer camp near El-Daein in Eastern Darfur. Reports indicate that there were 29,713 South Sudanese refugees in that camp as of 12 June 2016.

56. The Independent Expert welcomes the decision by the Sudanese authorities to receive South Sudanese refugees in the country. Nonetheless, he remains concerned about the precarious living conditions faced by the refugees. During his visit to the Khor Omer camp in El-Daein, he noted the lack of appropriate shelters for the refugees and was briefed on other challenges, including shortage of water, food and medicine and lack of space for the construction of emergency shelters, installation of water points and latrines. The provision of education and other services was still pending the relocation of the camp to a new site.

57. The Independent Expert calls upon the Government of the Sudan and the international community to provide the necessary humanitarian assistance to these refugees.

2. Southern Kordofan and Blue Nile

58. The resumption of ground hostilities between the Sudanese Armed Forces and the Sudan People's Liberation Movement-North in Southern Kordofan and Blue Nile, followed by aerial bombardment by the government forces, shelling and attacks against civilians led to a rapid deterioration of the security situation in the two areas since January 2016. These attacks reportedly resulted in deaths and injuries to civilians and the destruction of homes, crops, livestock and other civilian objects. According to reports received, the most affected areas were Kurmuk County in Blue Nile and Heiban and Dalami Counties in Southern Kordofan.

59. The Humanitarian Aid Commission in Blue Nile reported that about 476 families (an estimated 2,380 people) had arrived in various locations in Damazine locality from Kurmuk during April 2016. Reports also indicated that there were about 47,000 internally displaced persons in need in government-controlled areas of Blue Nile. An additional 545,000 internally displaced persons were reported in the areas of South Kordofan and Blue Nile that are controlled by the Sudan People's Liberation Movement-North.

60. As the violence persisted, the humanitarian situation became even more disturbing, with increased displacement and food insecurity. The fear of aerial bombardment forced civilians, especially women and children, to flee their homes to safe locations which were difficult to reach by humanitarian actors. The Independent Expert emphasizes the need for the Government to respect the principle of proportionality and respect for other humanitarian and human rights principles in its conduct of warfare with rebel forces in the two areas.

61. In this regard, the Independent Expert welcomed the announcement by the Government of the Sudan of a four-month unilateral cessation of hostilities as of 18 June 2016. He also welcomed the six-month unilateral ceasefire declared by the Sudanese Revolutionary Front in South Kordofan and Blue Nile on 28 April 2016. Moreover, he urges the armed movements to put the interests of the people of the Sudan first and to sign the road map agreement in order to bring peace and stability to the country.

V. Assessment of the current human rights situation

62. During his visit to the Sudan, the Independent Expert requested the Government of the Sudan to provide him with a report on the steps it had taken towards implementing the recommendations made in his report of September 2015 (A/HRC/30/60). Although the Government failed to produce such a report, the Independent Expert noted some positive steps, including the signing by the Government of the road map agreement aimed at ending the conflicts in Darfur, Southern Kordofan and Blue Nile, the establishment of a sub-office of the National Human Rights Commission in Darfur and the deployment of 20 prosecutors across Darfur, as part of efforts by the Sudanese authorities to improve access to justice. In addition, the Government continued to cooperate with human rights mechanisms, including the present mandate holder, and actively participated in the second cycle of the universal periodic review in May 2016.

63. Despite these steps, most of the recommendations made in the Independent Expert's last report remained largely unimplemented during the reporting period. The Independent Expert noted that the Sudan continued to face numerous human rights challenges. The overall democratic transformation of the Sudan has remained precarious. Parts of the legal framework, such as the National Security Act and the Criminal Act, and parallel legislation specific to Darfur, such as the emergency laws, continue to infringe on fundamental rights and freedoms. The harmonization of national laws with international human rights principles has advanced at a slow pace. In addition, restrictions on civil and political rights and the curtailment of the rights to freedom of expression, association and peaceful assembly, as well as freedom of the press have persisted. Increasing demands by political opposition groups, civil society organizations and students for democratic reforms have been met with repressive measures by the Sudanese authorities, including arrests and detention by the National Intelligence and Security Service. Human rights defenders, political opponents and journalists continue to be targeted and impunity remains a recurring problem.

64. The Independent Expert was also concerned that the death penalty continued to be applied during the reporting period, in particular against members of the Darfur armed movements, including the Justice and Equality Movement and the Sudan Liberation Army-Minni Minawi. In this regard, the Independent Expert noted that, in its concluding observations on the fourth periodic report of the Sudan, the Human Rights Committee recommended that the Sudan should consider abolishing the death penalty and acceding to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (see CCPR/C/SDN/CO/4, para. 14).

65. In the field of economic, cultural and social rights, the Independent Expert noted that, in the distribution of the national budget, the defence, police and security sectors accounted for 78 per cent of the total budget, compared to only 7 per cent allocated for agriculture, health, industry and education. The Independent Expert calls upon the Government of the Sudan to adopt a holistic approach to development and a national strategy for protecting and developing productive sectors, as well as a new poverty reduction strategy to address the root causes of inequalities in the country.

66. During his visit, the Government underscored the negative impact of the unilateral coercive measures on the enjoyment of human rights by the people of Sudan and advocated the lifting of the sanctions. In this regard, the Independent Expert looks forward to the report (A/HRC/33/48/Add.1) to be submitted to the Human Rights Council by the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, who conducted his first mission to the Sudan during the reporting period.

VI. Technical assistance and capacity-building

67. During the Independent Expert's visit to the Sudan in April 2016, various stakeholders reiterated the need for technical assistance and capacity-building for different institutions, both governmental and non-governmental, including the police, the judiciary, the National Intelligence and Security Service and non-governmental human rights organizations.

68. In his meetings with UNAMID, United Nations agencies and members of the diplomatic corps, the Independent Expert was made aware of the fact that some funding to key government bodies and non-governmental organizations was made by donor States and that technical assistance and capacity-building activities provided by various United Nations agencies and UNAMID would continue.

69. In this regard, United Nations Development Programme contributed to building the capacity of the National Human Rights Commission and its complaints committee to address human rights grievances by developing new internal regulations for the complaints committee and a comprehensive manual to address all procedural stages of the life cycle of a human rights complaint. More than 10,000 people across Sudan were made aware of the role and mandate of the Commission, with special focus on its complaint procedure.

70. Under the Joint Rule of Law Programme, UNAMID will continue to engage with the Government of the Sudan to support the operationalization of the transitional justice mechanisms such as the Justice, Truth and Reconciliation Commission and the Special Court for Crimes in Darfur, by providing technical and logistical assistance. In addition, UNAMID will support initiatives to strengthen the rule of law and compliance with international laws and best practices, including the effective re-establishment of the criminal justice chain in key pilot areas and improved coordination among criminal justice actors.

71. The Independent Expert reiterates his call to the donor community to continue its financial and technical support to the Government of the Sudan and civil society to ensure capacity-building in the area of human rights. He strongly believes that a spirit of cooperation is essential among the Government, donor States and the United Nations to improve the human rights situation in the country. He therefore encourages the Government to facilitate the unrestricted operation and mobility of UNAMID and United Nations agencies in the Sudan, including timely provision of visas to their staff and release of their shipments from the port. The Independent Expert is of the view that the presence and effective operation of these agencies would make a meaningful difference in the Sudan.

VII. Conclusion and recommendations

72. **Despite the steps taken by the Government of the Sudan in the field of human rights during the reporting period, the Independent Expert noted that major human rights challenges persist in the Sudan. The Government should take practical steps to address them. The realization of fundamental rights and freedoms, including the freedom of expression and association and the freedom of the press remains an enormous challenge in the Sudan. Notwithstanding the ongoing national dialogue, there is growing concern about the pervasive actions of the National Intelligence and Security Service and their impact on the exercise of civil and political rights in the country. During the reporting period, there were widespread reports of arbitrary arrests and incommunicado detention perpetrated by the National Intelligence and Security Service.**

73. The human rights situation in Darfur, Southern Kordofan and Blue Nile States remains precarious, with continuing fighting and breaches of human rights and international humanitarian law by all parties to the conflict. Hundreds of thousands of civilians continue to suffer the effects of the armed conflict through direct attacks, displacement and limited access to humanitarian assistance. The peace process continues to face significant challenges without the active participation of some major armed movements.

74. On the basis of his appraisal and assessment of the situation, the Independent Expert reiterates all the recommendations previously made and which have not been implemented, including those contained in his first report to the Human Rights Council and those made by previous mandate holders. In particular, the Independent Expert makes the recommendations below.

A. Government of the Sudan

75. The Independent Expert calls upon the Government of the Sudan:

(a) To ensure that all allegations of human rights violations and violations of international law are duly investigated and that the perpetrators are brought to justice promptly;

(b) To ensure that its security forces respect international human rights standards and international humanitarian law and protect civilians at all times;

(c) To continue the process of reviewing national laws to comply with international human rights standards and to take concrete measures to reform aspects of the current legal framework that are in breach of the exercise of civil and political rights and fundamental freedoms. In particular, priority should be given to withdrawing law enforcement powers, including the power of arrest and detention, from the National Intelligence and Security Service;

(d) To ensure unhindered humanitarian access to all humanitarian organizations so that they could provide the assistance necessary to persons displaced by the conflicts in Darfur, Southern Kordofan and Blue Nile States;

(e) To ensure that human rights defenders, journalists, members of the political opposition, students and other civil society actors are not intimidated, arrested and detained, ill-treated or tortured by State security agents as a result of their work, opinions or peaceful assembly.

B. International community

76. The Independent Expert calls upon the international community:

(a) To continue to provide the Government of the Sudan with technical and financial support for building democratic institutions for the protection and promotion of human rights in the country;

(b) To continue to support the programme of technical cooperation in the field of human rights with the Advisory Council for Human Rights and also to develop a programme of technical cooperation for the National Commission for Human Rights;

(c) To continue to support the continued presence of UNAMID in Darfur by providing it with the resources necessary for the protection of the civilian population and its basic rights;

(d) To continue its efforts to establish a lasting partnership with human rights actors in the Sudan.

C. Armed opposition movements

77. The Independent Expert calls upon the armed opposition movements:

(a) To protect civilians from violence and to refrain from any actions that could put the lives of civilians in danger, and to hold those who violate international human rights and humanitarian laws accountable;

(b) To put the interest of the people of the Sudan first and engage in negotiations and dialogue with the Government of the Sudan and to sign the road map agreement in order to bring peace and stability to the country.

United Nations A/HRC/33/65/Add.1

General Assembly

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Human Rights Council
Thirty-third session
Agenda item 10
Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the State on the report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi.

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Report of the Independent Expert on the situation of human rights in the Sudan: comments by the State*

A. General Comments

1. The Government of the Sudan appreciates the efforts exerted by the IE to fulfil the mandate described in the human rights council resolution 30/22 of September 2015 including the country visit to Sudan and the deliberations took place during the visit including discussions with government officials and other stakeholders in the agreed programme of the visit. (a copy of the programme is attached).

2. The report is largely devoted to the evaluation of the human rights situation in the country, while basically neglecting the core IE's mandate under Item 10 , stated in the HRC resolution A/HRC/res/30/22 which restricts the mandate to verifying and reporting on human rights situation, not in a monitoring capacity but for the purpose of making recommendations on technical assistance and capacity building.

3. The Government of the Sudan would like to draw the attention to a major concern in relation to the support provided to the IE by the OHCHR, particularly during his visit to the country (14-24 April 2016). The IE was supported by one OHCHR staff who was unfortunately not able to follow all meetings and events contained in the programme of the visit due to the load of work as he expressed in several occasions. The language barrier is also an issue of concern since most of the interlocutors could express themselves better in Arabic and the only assistant accompanying the IE does not speak Arabic. The inclusiveness of the report seems to be adversely affected by the lack of adequate resources available to the mandate of the Independent Expert.

4. The Government of the Sudan is also concerned by the tendency to pick some alleged incidents and take them as an evidence for making sweeping generalizations and reach inaccurate conclusions on the situation of human rights in the country. (see paragraphs 9,10,11,15,18 of this document for more details).

5. Politicization of human rights issue continues to pose a vast challenge to the work of human rights in the country. Political opponents to the sitting government persistently use human rights issues as a tool in their opposition including by promoting unfounded claims and twisted narrations aiming at portraying a negative image for the government. The report under consideration shows no sensitivity towards this issue, it is rather sending confusing messages that can provide enabling conditions to the political misuse of human rights issues.

6. As far as technical assistance and capacity building is concerned the government of the Sudan notes with regret that the report failed to provide any analysis and/or assessment in the area of needs and required assistance to the Sudan in the field of human rights. The deliberations and discussions that took place on this issue in the meetings held with different stakeholders during the visit, including with Government officials did not enjoy adequate consideration in the report. In March 2016 a set of projects for technical assistance to different related institutions was shared with the Independent Expert with a view to cooperate in funding and implementing them, this document dose not also enjoy any attention in the report. This could undermine the mandate.

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* Reproduced as received.

B. Comments and observations

7. In Paragraph 7, a clarification is needed regarding the meeting held in the Judiciary where the meeting was held with the Deputy Chief Justice and representatives of Judiciary, it is also the case in the meeting held in humanitarian aid commission (HAC) where the IE met with the Deputy Commissioner of the Humanitarian Aid Commission. In line 15 of the same paragraph, the phrase "victims of human rights violations" is to be revised to read "victims of alleged human rights violations", since and unless human rights violations have been substantiated by a competent judicial body, they remain mere allegations.

8. In paragraph 8, it is deemed important to state that the official name for the Special court assigned with the jurisdiction of trying conflict-related crimes in Darfur is the SPECIAL COURT FOR DARFUR, the name of the court and its special prosecutor need to be corrected in the entire report. The report is silent about the IE's meeting with Head of the Judicial Organ of North Darfur state, thereby ignoring the briefing during that meeting of the remarkable improvement in the judiciary infrastructure and the increase in number of judges. The report is also silent towards the statement of the Public Prosecutor of Darfur Special Court in respect to non-cooperation by UNAMID with the Office of the Prosecutor in reporting incidents, where more than 40 acts of assault were committed against UNAMID personnel including an incident of murder. UNAMID also refused to take part in the joint investigation committee concerning the killing of 7 Sudanese civilians in the city of Kass in 20 & 21 April 2015.

9. In Paragraph 12, with respect to the national dialogue it is important to clarify the fact that 79 political parties and 31 armed oppositions groups have participated actively, therefore describing the dialogue as tainted with a wide boycott is clearly inaccurate. The report mentions only three parties and three armed groups, given that the name "Umma" is common in 6 political parties, 5 of which took part in the dialogue.

10. In paragraphs 13&14 , the report managed to stress some views of the "political opposition", while failed to recognize the guarantees and measures adopted by the Government to ensure atmosphere conducive for the national dialogue, including by the declaring a cease fire and general amnesty for armed rebel groups. These measures and guarantees enabled those 31 rebel movements to be represented and freely participate in the national dialogue.

11. Regarding the statements in paragraph 15, it is rather important to make it clear that the military operation launched in January 2016 by SAF was a legitimate response to put an end to the continuous attacks and looting of civilian, military and commercial convoys by SLA/ Abdulwahid in some areas of Jebel Marra. Government Authorities can never remain idle towards the destructive activities of an armed rebel group. The abuses conducted by the rebel groups should be clearly condemned.

12. In paragraph 20, concerning the September 2013 incidents, and with conformity with the national legal system, an independent inquiry was launched and is still going on. 86 case diaries were opened, criminal investigations are under process including post-mortum examination and eye witness testimonies. Several cases were referred to trial and the Government took the initiative to compensate those affected by the incidents including the families of those who lost their lives.

13. Paragraph 22-23: More than 45 news-papers are issued in Sudan freely without any restriction as to freedom of expression and freedom of opinion, including 30 daily political news-papers. During his visit to NISS's headquarters, the IE was informed that NISS dose not exercise any kind of pre-printing censorship on newspapers. What usually happens is that only media contraventions are being followed up, and the attempts to address complaints presented by the Press Council concerning publication of materials that

contravene the law. If such rights are infringed, the affected party can seek remedy including by resorting to the constitutional court (including the example given in para 24 of the IE report).

14. Paragraph 25: Concerning the issue of curtailment of activities of civil society organizations, the report mentioned two cases. In Sudan, the total number of civil society organization registered is 4,557 national NGOs, 97 international NGOs, and 47 national networks. The organizations mentioned in the report are all NGOs and are bound by applicable Law and related regulations. The majority of NGOs observe their mandate and has very positive contributions in human rights and humanitarian activities fields. The natural consequence of contravening law and regulations is the application of law through the legal procedures. Taking legal or even security procedures against two or three organizations in accordance with the applicable law, does not mean NGOs curtailment.

15. Paragraphs 26-27: KCTHD organized an activity which could undermine the national security by training some individuals on means designated to foil and sabotage the general elections taking place at that time. Ordinary criminal proceedings were initiated against them in accordance with the due process of law. All their constitutional and legal rights had been preserved.

16. Paragraph 28: The assumption that the reason beyond the travel ban on four individuals described as human rights defenders was their cooperation with the UN or their human rights activities is totally untrue. The travel ban (or rather travel delay) was for reason of emigrational documents irregularity. A week after, and upon rectification of the issue, the four persons left for Paris to join political opposition meetings without restrictions.

17. Paragraph 31:The General Assembly of the national dialogue, which is due to issue its outcomes, comprises 50 representatives of CSOs, besides the political parties and armed movements. The dialogue is inclusive and transparent, and no one is excluded from participation. Furthermore, the cooperation with NGOs and CSOs in the process of preparation for the UPR is a case in point where more the 50 organizations were actively involved. In conclusion, cooperation and dialogue between the Government is well established and being developed with a view of better serving the people of the Sudan including by further promoting and advocating human rights principles. The support of IE in this regard will be welcome.

18. Paragraph 34: The report cited the narration of the part of Pastor Telahoon Nogosi while dismissing the Government' statement that the said Pastor and others were duly accused of engaging in spying activities, providing financial support to armed and terrorist groups and disseminating fabricated information. The charges have nothing to do with their religious believes, activities or affiliation. They were indicted by the public prosecution and referred for trial. Pastor Telahoon Nogosi was in fact discharged before referral for trial for lack of sufficient evidence. All the requirements of fair trail are guaranteed to the above mentioned accused persons. The above mentioned information were communicated to the special procedures branch in response to a joint urgent appeal by eight mandates including the mandate of the IE on the situation of human rights in the Sudan.

19. Regarding paragraph 37 and 38, the freedom of peaceful assembly and association is guaranteed and regulated by law. The cases referred to were neither peaceful nor legal. Participants of the s t-in that those not meet the required regulations tried forcibly to prevent their colleagues from conducting their examinations, this action led to confrontation among the students, at this point the intervention by the authorities was necessary to maintain order in the respective campus.

20. Paragraphs 40 and 41: The report refer to the escalation of military operations in Jebel Mara area without reflecting the fact that the rebel groups have initiated those

operations by attacking sites and convoys of SAF beside attacking more than five villages in which SAF had no presence. The attacks occurred more than 16 times during the period from August 2015 to January 2016. It's worth mentioning that the responsibility of the rebels in the said escalation is well known and internationally reported and condemned. Bearing in mind that the reaction of the Government is deemed necessary as an exercise the right of self-defence and to protect the civilians from abuses committed by rebel movements as well as to create conducive environment for SAF to carry out its duties more effectively.

21. Paragraph 42. Full access for humanitarian actors is being granted unless security situation does not allow guaranteeing safety and security of humanitarian workers. Figures concerning IDPs mentioned in paragraph 42 are not accurate, according to HAC the number of people displaced as a result of the recent clashes in Jebel Marra is around 80 thousands, most of them were able to voluntarily return (around 66 thousands according to HAC).

22. Paragraph 47. The call of the Independent Expert to the Government for maintaining a safe and secure environment for the displaced communities meets with tremendous efforts exerted by the authorities in this concern; those efforts are always faced by the terrorist activities of rebel group agents who penetrate among IDPs. The alleged 9 incidents of rape mentioned are not registered in the police records, and unfortunately no information regarding the said alleged cases was shared with the Sudanese authorities. These alleged cases are **either mere allegations or a new example of lack of cooperation and lack of due respect to the Governmental authorities from those who received the said reports.**

23. Paragraph 51: According to the information provided in the Humanitarian Response Plan 2016 the number of IDPs in Darfur is 2 Million, the Government welcomes the cooperation of the international humanitarian community for sustainable durable solutions that answers the needs and requirements for the best interest of the conflict affected communities in Darfur. The Government is annoyed by the tendency, in this report, to highlight views of different stakeholders except those provided by Government officials.

24 Paragraph 54. An important correction is necessary to the information mentioned in this report, the additional number of prosecutors deployed in Darfur since the beginning of 2016 is 20, and not 10 as mentioned in the report. Those statistics were clearly stated in the presentation made by the general prosecutor for special court for Darfur during his meeting with the Independent Expert on 23 April 2016. A prosecution office has been established in each of the 120 localities of the 5 states of Darfur, except 5 localities, which are regularly visited by the nearest resident public prosecutor. The source of information saying that most of the prosecutors were recalled should be questioned, in fact no prosecutor was recalled and all of them are conducting their duties in the area of their deployment.

25. Paragraph 62: Many points need to be clarified to provide additional information aiming at supporting the Independent Expert to reach more comprehensive assessment for the current situation of human rights:

(a) In addition to the information made available to the I. E., the Government took the initiative of voluntarily providing the Independent Expert with a written report illustrating the steps taken in implementing the previous IE's recommendations. No specific timeline was determined. The progress report on implementation of the IE report is being prepared and planned to be submitted on July 31st 2016.

(b) The number of prosecutors additionally deployed in the five states of Darfur since the beginning of 2016 is twenty prosecutors and not ten as mentioned in the report. This brings the total number of prosecutors in Darfur to 120.

(c) With regard to the cooperation of Sudan with human rights mechanisms it is important to add that Sudan received also the Special Rapporteur on the negative impact of the unilateral coercive measures on enjoyment of human rights (SR-UCMs) during the period covered by the report (23- 30 November 2015). The cooperation of the Independent Expert with the SR-UCMs is extremely important, steps taken by the IE in this concern are commendable including joint meetings of the two mandate holders with the permanent representative of Sudan in Geneva, those steps were surprisingly skipped in the advanced version of the IE report shared with the Government.

26. Paragraph 63: During his visit the IE was briefed on the law reform process, including the briefing the on the ongoing work of the law reform committees by the head or rapporteur of each committee during the meeting held with the ACHR in his last country visit. The report also surprisingly skipped this important issue. The laws identified to be revised and reformed by the presidential decree 140/2015 include -among others- the Criminal Act, the criminal Procedures Act, the National security Act, the Press Act, the Personal Status Act and others. The report skipped this fact. It is also relevant here to reiterate the general comment stated in paragraph 5 of this document.

27. Paragraph 64: with regard to death penalty, it is part of the Sudanese Penal Code and the position of the Government was repeatedly clarified including during the review by the Human Rights Committee referred to in the report. It is important here to clarify that:

(a) The imposition of death penalty is constitutionally restricted by Article 36 of the National Interim Constitution 2005.

(b) The assertion in the IE's report that Darfuri armed rebel groups is particularly targeted by such penalty is not true. Only those who commit serious crimes punishable by capital punishment according to the law face death penalty regardless of their affiliation.

(c) Death penalty, though provided for in certain legislative provisions for serious crimes, and occasionally announced by judicial decisions, is rarely executed. Private pardon, general amnesty and decisions by the higher courts or the Constitutional Court overriding conviction or substituting the sentence substantially reduce to the minimum the cases in which the death penalty is carried out.

(d) The fear of the rebel armed groups of such a punishment is originated from the illegal harmful and destructive ways and means they adopt as tools to achieve their interests at the expense of the safety and security of the people of the Sudan.

28. Paragraph 77: Sudan respects the views expressed by the Independent Expert and efforts he continue to exert including communications with armed rebel groups, while supporting the recommendation 77(b), the Government of the Sudan is constrained to express its strong reservation and total objection in regard to the recommendation 77(a) and any legal implication related to it. Such a recommendation cannot be legally acceptable to be directed to a non- state actor.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Methods of work of the Working Group on Arbitrary Detention*

I. Introduction

1. The methods of work take account of the specific features of the terms of reference of the Working Group on Arbitrary Detention under Commission on Human Rights resolutions 1991/42, 1992/28, 1993/36, 1994/32, 1995/59, 1996/28, 1997/50, 1998/41, 1999/37, 2000/36, 2001/40, 2002/42, 2003/31 and 2004/39, as well as Human Rights Council resolutions 6/4, 10/9, 15/18 and 24/7. In resolution 1991/42 the Commission gave the Working Group not only the task of informing the Commission by means of a comprehensive report, but also of investigating cases of deprivation of liberty imposed arbitrarily (para. 15).

II. Functioning of the Working Group

2. The Working Group was established by the Commission on Human Rights in its resolution 1991/42. The initial mandate of the Working Group was renewed by the Commission and the Human Rights Council. The Council assumed the mandate of the Working Group in its decision 1/102 and renewed the mandate in its resolutions 6/4, 15/18 and 24/7. The Working Group's mandate is considered for renewal every three years.

3. The Working Group is organized internally as follows:

(a) The Working Group shall elect, at its spring session, a Chair-Rapporteur and two Vice-Chairs for a term of one year, taking due account of the need for rotation among the geographical regions and the gender balance, among other considerations. They shall take office at the end of the same session. Each officer can be re-elected;

* The present methods of work supersede those contained in document A/HRC/30/69.

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(b) The Chair-Rapporteur shall perform the functions conferred upon him or her by the resolution that creates or renews the mandate of the Working Group, the methods of work and the decisions of the Working Group. The Chair-Rapporteur shall represent the Working Group before the Human Rights Council, States and other relevant stakeholders. She or he shall chair the sessions of the Working Group;

(c) One of the Vice-Chairs shall be the Working Group's focal point for individual complaints; the other shall be the focal point for follow-up on all actions taken by the Working Group;

(d) In the exercise of their functions, the Chair-Rapporteur and the Vice-Chairs shall remain under the authority of the Working Group. In the absence of the Chair-Rapporteur, one of the Vice-Chairs shall temporarily assume the assigned functions of the Chair-Rapporteur as required by the circumstances;

(e) Each of these three officers shall report fully to the Working Group at the beginning of each session on activities they have undertaken during the intersessional period, and on any activity undertaken during a session without the other members of the Working Group;

(f) The Working Group can appoint at any time a rapporteur on specific issues of interest.

4. The Working Group meets at least three times a year, for at least five to eight working days, generally in Geneva.

5. When the case under consideration or the country visit concerns a country of which one of the members of the Working Group is a national, or in other situations where there may be a conflict of interest, that member shall not participate in the discussion of the case, in the visit or in the preparation of the report on the visit.

6. During the course of its deliberations, when dealing with individual cases or situations, the Working Group renders opinions, which are listed in the annual report it submits to the Human Rights Council. The opinions of the Working Group are the result of consensus; where consensus is not reached, the view of a majority of the members of the Working Group is adopted as the view of the Working Group.

III. Implementation of the mandate of the Working Group

7. The mandate of the Working Group is to investigate cases of deprivation of liberty imposed arbitrarily. In the discharge of its mandate, the Working Group refers to the relevant international standards set forth in the Universal Declaration of Human Rights, as well as to the relevant international instruments accepted by the States concerned, in particular the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees of 1951, the International Convention on the Elimination of All Forms of Racial Discrimination and, when appropriate, any other relevant standards, including the following:

(a) The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(b) The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);

(c) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty;

(d) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);

(e) The Convention on the Rights of the Child;

(f) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

8. As a general rule, in dealing with situations of arbitrary deprivation of liberty within the meaning of paragraph 15 of resolution 1997/50, the Working Group shall refer, in the discharge of its mandate, to the following five legal categories:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13-14 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

IV. Submission and consideration of communications

A. Submission of communications to the Working Group

9. Communications shall be submitted in writing and addressed to the secretariat, giving the family name, first name and address of the sender and (optionally) his or her telephone, telex and telefax numbers or e-mail address.

10. As far as possible, each case shall form the subject of a presentation indicating the circumstances of the arrest or detention and the family name, first name and any other information making it possible to identify the person detained, as well as the latter's legal status, particularly:

(a) The date and place of the arrest or detention or of any other form of deprivation of liberty and the identity of those presumed to have carried it out, together with any other information shedding light on the circumstances in which the person was deprived of liberty;

(b) The reasons given by the authorities for the arrest, detention or deprivation of liberty;

(c) The legislation applied in the case;

(d) The action taken, including investigatory action or the exercise of internal remedies, by the administrative and judicial authorities, as well as the steps taken at the international or regional levels, and the results of such action or the reasons why such measures were ineffective or were not taken;

(e) An account of the reasons why the deprivation of liberty is deemed arbitrary;

(f) A report of all elements presented by the source that aim to inform the Working Group on the full status of the reported situation, such as the beginning of a trial; the granting of provisional or definitive release; and changes of incarceration conditions or venue or of any other similar circumstances. An absence of information or an absence of a response by the source may lead the Working Group to terminate its consideration of the case.

11. In order to facilitate the Working Group's work, it is hoped that communications will be submitted using the model questionnaire available from the Working Group's secretariat.

12. Communications addressed to the Working Group may be received from the individuals concerned, their families or their representatives. Such communications may also be transmitted by Governments and intergovernmental and non-governmental organizations as well as by national institutions for the promotion and protection of human rights. In dealing with communications, the Working Group will give consideration to articles 9, 10 and 14 of the Code of Conduct for Special Procedures Mandate-Holders of the Human Rights Council.

13. In accordance with the provisions of paragraph 4 of Human Rights Commission resolution 1993/36, the Working Group may, on its own initiative, take up cases that might constitute arbitrary deprivation of liberty.

14. When the Working Group is not in session, the Chair-Rapporteur, or in his or her absence the Vice-Chairs (see para. 3 (c) and (d) above), may decide to bring the case to the attention of the Government.

B. Consideration of communications

15. In the interest of ensuring mutual cooperation, communications shall be brought to the attention of the Government and the reply of the latter shall be brought to the attention of the source of the communication for its further comments. They shall be transmitted by the Chair-Rapporteur of the Working Group or, if she or he is not available, by the Vice-Chairs (see para. 3 (c) and (d) above). In the case of Governments, the letter shall be transmitted through the Permanent Representative to the United Nations Office at Geneva. In the letter the Working Group shall request the Government to reply within 60 days, during which appropriate inquiries may be carried out by the Government so as to furnish the Working Group with the fullest possible information. In the letter the Working Group shall also inform the Government that the Working Group is authorized to render an opinion determining whether the reported deprivation of liberty was arbitrary or not. If a reply is not received from the Government within the time limit, the Working Group may render an opinion on the basis of the information submitted by the source.

16. If the Government desires an extension of the time limit, it shall inform the Working Group of the reasons for requesting one, so that it may be granted a further period of a maximum of one month in which to reply. Even if no reply has been received upon expiry of the time limit set, the Working Group may render an opinion on the basis of all the information it has obtained.

C. Action taken on communications

17. In the light of the information obtained, the Working Group shall take one of the following measures:

(a) If the person has been released, for whatever reason, following the referral of the case to the Working Group, the case is filed. The Working Group reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Working Group considers that the case is not one of arbitrary detention, it shall render an opinion to that effect. The Working Group can also make recommendations in this case if it considers it necessary;

(c) If the Working Group considers that further information is required from the Government or from the source, it may keep the case pending until that information is received;

(d) If the Working Group considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.

18. The opinions rendered by the Working Group shall be transmitted to the Government concerned. Forty-eight hours after their transmittal, they shall be communicated to the source. An advance unedited version of the opinion will be published online once the source has been notified.

19. The opinions rendered by the Working Group shall be brought to the attention of the Human Rights Council in its annual report.

20. Governments, sources and other parties should inform the Working Group of the follow-up action taken on the recommendations made by the Working Group in its opinion. This will enable the Working Group to keep the Human Rights Council informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.

D. Procedure for review of opinions

21. In exceptional circumstances, the Working Group may *proprio motu* reconsider its opinions if it becomes aware of new facts that, if known at the time of the decision, would have led the Working Group to a different outcome. The Working Group may also reconsider its opinions at the request of the Government concerned or the source under the following conditions:

(a) If the facts on which the request is based are considered by the Working Group to be entirely new and such as to have caused the Working Group to alter its decision had it been aware of them;

(b) If the facts had not been known or had not been accessible to the party originating the request;

(c) In a case where the request comes from a Government, on condition that the latter has observed the time limit for reply referred to in paragraphs 15-16 above;

V. Urgent action procedure

22. A procedure known as "urgent action" may be resorted to in the following cases:

(a) In cases in which there are sufficiently reliable allegations that a person is being arbitrarily deprived of his or her liberty and that the continuation of such deprivation constitutes a serious threat to that person's health, physical or psychological integrity or even to his or her life;

(b) In cases in which, even when no such threat is alleged to exist, there are particular circumstances that warrant an urgent action.

23. After having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals, which are of a purely humanitarian nature, in no way prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

24. The Chair-Rapporteur, or in his or her absence the Vice-Chairs (see para. 3 (c) and (d) above), shall transmit the appeal by the most rapid means to the Minister for Foreign Affairs through the Permanent Mission of the country concerned.

VI. Country visits

25. For the purposes of completing its task, the Working Group frequently pays visits on official mission. The visits are prepared in collaboration with the Government, the United Nations agencies in the field and civil society representatives. The visits are an opportunity for the Working Group to engage in direct dialogue with the Government concerned and with representatives of civil society, with the aim of better understanding the situation of deprivation of liberty in the country and the underlying reasons for arbitrary detention. An important part of these missions are visits to detention centres, including penitentiaries, prisons, police stations, detention centres for migrants and psychiatric hospitals.

26. When the Working Group receives an invitation from a Government to conduct a country visit, it responds by inviting the Permanent Representative of the State to the United Nations Office at Geneva to a meeting to determine the dates and terms of the visit. The secretariat of the Working Group initiates a dialogue with the parties involved in the visit with a view to taking all practical measures to facilitate the mission. The preparation for the visit is conducted in close cooperation with diplomatic authorities of the host country and United Nations agencies.

27. The Government must assure the Working Group that, during the visit, the Working Group will have the opportunity to conduct meetings with the highest authorities of the branches of the State (political, administrative, legislative and judicial authorities), that it will be able to visit penitentiaries, prisons, police stations, immigration detention centres, military prisons, detention centres for juveniles and psychiatric hospitals and that it will be able to meet with all the authorities and officials who affect the personal liberty of persons subjected to the jurisdiction of the host State. The Working Group shall also conduct meetings with international bodies and agencies as well as with non-governmental organizations, lawyers, bar associations and other professional associations of interest, national human rights institutions, diplomatic and consular representatives and religious authorities. Absolute confidentiality shall be guaranteed during the interviews between the Working Group and persons deprived of their liberty. The Government shall guarantee there will be no reprisals against persons interviewed by the Working Group.

28. The Working Group shall conduct at least two visits per year, and its delegation will be composed of at least two of its members.

29. At the end of its visit, the Working Group shall submit a preliminary statement to the Government, informing it about its preliminary findings. It shall inform the public of its findings by means of a press conference after debriefing the Government.

30. A report shall be prepared by the Working Group, and once adopted it shall be communicated to the Government of the country visited with a view to gathering its observations on factual and legal errors. The final report shall take into consideration the observations of the Government. It shall be published as an addendum to the annual report.

31. During the visit, members of the Working Group shall respect the legislation of the host country.

32. Two years after its visit, the Working Group shall request the Government to present a report on the implementation of the recommendations formulated in the mission report. All of the stakeholders involved in the visit shall be informed during the follow-up procedure and shall submit their observations. If necessary, the Working Group shall request a follow-up visit to the country concerned.

VII. Coordination with other human rights mechanisms

33. In order to strengthen the good coordination that already exists between the various United Nations bodies working in the field of human rights (see Commission on Human Rights resolution 1997/50, para. 1 (b)), the Working Group takes action as follows:

(a) If the Working Group, while examining allegations of violations of human rights, considers that the allegations could be more appropriately dealt with by another working group or special rapporteur, it will refer the allegations to the relevant working group or special rapporteur within whose competence they fall, for appropriate action;

(b) If the Working Group receives allegations of violations of human rights that fall within its competence as well as within the competence of another thematic mechanism, it may consider taking appropriate action jointly with the working group or special rapporteur concerned;

(c) If communications concerning a country for which the Human Rights Council has appointed a special rapporteur, or another appropriate mechanism with reference to that country, are referred to the Working Group, the latter, in consultation with the rapporteur or the person responsible, shall decide on the action to be taken;

(d) If a communication addressed to the Working Group is concerned with a situation that has already been referred to another body, action shall be taken as follows:

(i) If the function of the body to which the matter has been referred is to deal with the general development of human rights within its area of competence (e.g. most of the special rapporteurs, representatives of the Secretary-General, independent experts), the Working Group shall retain competence to deal with the matter;

(ii) However, if the body to which the matter has already been referred has the function of dealing with individual cases (e.g. the Human Rights Committee and other treaty bodies), the Working Group shall transmit the case to that other body if the person and facts involved are the same.

34. The Working Group shall not make visits to countries for which the Human Rights Council has already appointed a country rapporteur or another appropriate mechanism with reference to that country, unless the special rapporteur or the person responsible considers the visit by the Working Group to be useful.